IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1170 of 1999

with

SPECIAL CIVIL APPLICATION No 628 of 1989

with

MISC. CIVIL APPLICATION NO. 93 OF 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RR SHUKLA

Versus

DISTRICT SUPERINTENDENT OF POLICE

Appearance:

1. Special Civil Application No. 1170 of 1999
   MR IS SUPEHIA for Petitioner No. 1
   MR PANDYA, AGP for Respondent No. 1
2. Special Civil Application No. 628 of 1989
   MR IS SUPEHIA for Petitioner No. 1
   MR PANDYA, AGP for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr. I.S.Supehia for the petitioner and learned AGP Mr. Pandya appearing on behalf of the respondents.

2. The brief facts of both the petitions are as under.

3. At the time when Special Civil Application No. 1170 of 1999 was filed by the petitioner, he was serving as Head Constable Grade-II in Dakor Police Station. Initially he was appointed as Armed Police Constable and then posted in the Mounted Unit where he was promoted as Head Constable Grade-II in the year 1985. On account of his involvement in criminal case the petitioner was transferred from Mounted Unit and also from Nadiad to Dakor in the year 1989 which is the subject matter of Special Civil Application No. 628 of 1989, wherein, interim relief has been refused against the transfer order by this Court. Thereafter, petitioner came to be acquitted in criminal case on 6.4.1998 and his suspension is also revoked and suspension period has been treated as spent on duty by the order dated 29.9.1998. Therefore, on 13.11.1998, the petitioner made a representation to the respondent No.3 to restore his seniority and promotion to the post of Head Constable Grade-I w.e.f. 3.11.1989 when his junior was promoted. But, by letter dated 16.12.1998 his representation was rejected and therefore, Special Civil Application No. 1170 of 1999 has been filed.

3. Against Special Civil Application No. 1170 of 1999 no reply has been filed by the respondents but in Special Civil Application No. 628 of 1989 detailed reply has been filed by the respondents. Misc. Civil Application No. 93 of 1989 has been filed by the petitioner for taking contempt action against the respondents under order 39 Rule 2(A) of the Civil Procedure Code.

4. Learned Advocate Mr. I.S.Supheia has submitted that there are different seniority lists maintained by the respondents; one is at Mounted Unit and the another is regular Police Force. He submitted that there are more chances of promotion available to the petitioner

when he was working at Mounted Unit. The petitioner was initially transferred from Mounted Unit to Nadiad and Dakor on the basis of the criminal complaint filed against the petitioner. Learned advocate Mr. Supehia submitted that in criminal case petitioner has been declared honourably acquitted by the competent criminal court, therefore, suspension order was also revoked and entire period of suspension has been treated as spent on duty. Therefore, he submitted that naturally other consequences about his seniority at Mounted Unit and whatever the chance of promotion available at Mounted Unit are required to be granted by the respondents.

5. Learned AGP Mr. Pandya appearing on behalf of the respondents has submitted that respondent will reconsider the matter of the petitioner while considering his seniority at Mounted Unit and whatever the chance of promotion available as per rules will be reconsidered by the respondents within some reasonable time in light of the fact that in criminal case the petitioner was declared honourably acquitted by the competent court and suspension is revoked and entire period of suspension was treated as spent on duty.

6. In view of the submissions made by both the learned advocates, it is directed to the respondents to reconsider the matter of the petitioner while considering the seniority at Mounted Unit and whatever chance of promotion available to the petitioner at Mounted Unit as per the service rules of the respondents, within a period of two months from the date of receiving the copy of the said order and, if, ultimately, the respondent authority come to the conclusion that according to the service rules, petitioner is entitled the said benefit, then the same may be given to the petitioner within a period of three months from the date of such decision.

7. In view of the above observations and directions both the petitions are disposed of. Rule is discharged. Interim relief, if any, stand vacated.

8. Since both the petitions are disposed of, therefore, there is no need to pass any order in Misc. Civil Application No. 93 of 1989 and same is also disposed of accordingly.

(H.K.Rathod,J)

Jayanti*